

INITIAL STATEMENT OF REASONS

CCR §§ 2000, 2465, 2640, 2643, 2666, 2668, 2676, 2677, 2678 and 2714 PAROLE REVOCATION AND REVOCATION EXTENSION

CIRCUMSTANCES THAT THE REGULATORY AMENDMENTS ARE INTENDED TO ADDRESS

These regulatory amendments are designed to provide clarification of the parole revocation and revocation extension process. Additionally, these amendments are designed to make the regulatory language in the proposed changes more precise and consistent with the law and current practice. Existing law provides the Board of Prison Terms (BPT) with authority under Penal Code sections 3057(a) and 3060 to suspend or revoke any parole, or extend and order any prisoner returned to prison for up to 12 months. This action is designed to promulgate BPT policy pursuant to the Administrative Procedure Act.

NECESSITY

These proposed regulatory amendments are necessary to: 1) more accurately reflect witnesses and their purpose in parole revocation and revocation extension and rescission proceedings; 2) clarify use and service of subpoenas; 3) clarify review of National Crime Information Center (NCIC) warrants; 4) modify the time frames for staff review of parole violation reports; and 5) to ensure clarity and consistency of the applicable regulatory language.

SUMMARY OF PROPOSED AMENDMENTS

Section 2000. The definitions of evidentiary witness and dispositional witness are added, in alphabetical order, in section 2000(b), for reference as necessary to ensure consistent application of their meaning in these proposed regulation changes. The former definitions of adverse witness and friendly witness are deleted and replaced by these definitions. Various grammatical modifications have been made to maintain clarity and consistency. In addition, renumbering of the definitions has been modified to provide for the addition and deletion of definitions.

Section 2465. The proposed changes to section 2465 are necessary to provide a clearer description of the type of witnesses to be requested at rescission hearings. Various grammatical modifications have been made to maintain clarity and consistency. Reference cited is modified to reflect the correct Penal Code citation.

Section 2640. The proposed modification to section 2640 is necessary to conform to time frames for review of violation reports contained in the California Department of Corrections' regulations and their Departmental Operations Manual (CCR 3901.21.7 and DOM 81040.12.1).

Section 2643. The proposed changes to section 2643 are necessary to clarify the type of witnesses utilized in parole revocation hearings. These hearings are bifurcated into two phases, fact finding and disposition. As noted in section 2000, an evidentiary witness is one whose expected testimony either supports or refutes an act or omission allegedly committed by the parolee or prisoner. A dispositional witness is one whose expected testimony provides information regarding the overall adjustment of the prisoner or parolee or other factors to be considered when rendering a disposition in a proceeding. Various grammatical modifications have been made to maintain clarity and consistency. Additionally, authority cited is modified to reflect the correct Penal Code citation.

Section 2666. The proposed changes to section 2666 are to remedy a typographical or printing error and modify language to ensure clarity and consistency. The hearing panel is required to review all evidence in order to render an informed decision regarding the request for counsel; therefore, the use of the term "not" is to be removed in order to more accurately reflect the intent of the section. Various grammatical modifications have been made to maintain clarity and consistency. In addition, the authority and reference citations have been added as required by Government Code section 11349.

Section 2668. The proposed changes to section 2668 are necessary to clarify the type and role of witnesses utilized in parole revocation hearings. These hearings are bifurcated into two phases, fact finding and dispositional. Evidentiary witness is a more accurate term for the type of witness used in the fact-finding or evidentiary phase of the hearing. Dispositional witness more accurately defines the type of witness used in the dispositional phase of the hearing. The listing of the witnesses is changed to reflect the order in which they appear at hearings. Authority cited is modified to reflect the correct Penal Code citation.

Section 2676. The proposed changes to section 2676 are necessary to more clearly set out who may request a subpoena or subpoena duces tecum prior to scheduled parole revocation or parole rescission hearings, and to further clarify the proper procedure for implementing a subpoena duces tecum. Authority cited is modified to reflect the correct Penal Code citation.

Section 2677. The proposed changes to section 2677 are necessary to clarify under what circumstances a subpoena will be issued to compel the attendance of a witness at a hearing. The change of witness types is the same as noted in section 2668. Additionally, subdivision (e) is redefined to explain that staff must document the reason for a denial of a request for a subpoena.. Authority cited is modified to reflect the correct Penal Code citation.

Section 2678. The proposed changes to section 2678 are necessary to clarify the methods of service of subpoenas issued in accordance with section 2677. These methods are outlined in the Government Code and Penal Code. Authority and reference citations have been modified to reflect the correct citations.

Section 2714. The proposed changes to section 2714 are necessary to accurately reflect the policy of the National Crime Information Center (NCIC) regarding warrants posted in their system. The NCIC requires that the warrants be reviewed every five years.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The BPT did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action. These suggested amendments do not significantly change or impact the parole revocation or revocation extension process. These changes clarify and use more precise language. As previously noted, this action is designed to promulgate existing policy pursuant to the Administrative Procedure Act.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The BPT has determined there are no reasonable alternatives to be considered that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The BPT has not identified any alternatives that would lessen any adverse impact on small businesses.